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SID AVERY AND ASSOCIATES, INC. DBA MPTV IMAGES

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SID AVERY AND ASSOCIATES, INC.
dba MPTV IMAGES,

Plaintiff,

v.

PIXELS.COM, LLC,

Defendant.

Case No.: 2:18-cv-10232

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

Demand for Jury Trial

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff SID AVERY AND ASSOCIATES, INC. dba MPTV IMAGES by and
through its undersigned counsel, brings this Complaint against Defendant

PIXELS.COM, LLC for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff SID AVERY AND ASSOCIATES, INC. dba MPTV IMAGES (“MPTV”) brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy, display, distribute and create derivative works of MPTV’s original copyrighted works of authorship.

2. Sid Avery was a famous photographer best known for capturing iconic images of legendary Hollywood celebrities like Elizabeth Taylor, Rock Hudson, James Dean, Marlon Brando, and Frank Sinatra.

3. Avery founded MPTV in efforts to preserve the work of Hollywood photographers and owns the copyrights in the images at issue in this case.

4. Defendant PIXELS.COM, LLC (“Pixels”) owns and operates a number of art marketplaces on the internet that utilize print-on-demand technology, including www.fineartamerica.com, www.1xondemand.com, www.bridgemanondemand.com, www.designerprints.com, www.licensing.pixels.com, www.mobileprints.com, www.pixels.com, www.scottlistfieldondemand.com, www.shopdeckthewallsart.com, www.shopforart.com, and www.shopthegreatframeupart.com. Pixels advertised and sold items that infringed Plaintiff’s copyrights.

5. MPTV alleges that Pixels copied MPTV's copyrighted works from the internet in order to advertise, market and promote its business activities. Pixels committed the violations alleged in connection with Pixels' business for purposes of advertising and promoting sales to the public in the course and scope of Pixels' business.

JURISDICTION AND VENUE

6. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

7. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

8. Pixels is subject to personal jurisdiction in California.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

DEFENDANT

10. Pixels.com, LLC d/b/a Pixels.com is an Illinois limited liability company with its principal place of business at 2202 Main Street, Santa Monica, California 90405, and can be served by serving its Registered Agent, Sean Broihier, 2202 Main Street, Santa Monica, California 90405.

THE COPYRIGHTED WORKS AT ISSUE

11. Attached hereto as Exhibit 1 are nineteen (19) photographs created by Sidney Avery at issue in this case, which are referred to herein as the “Works.”

12. The Works at issue were registered with the Register of Copyrights as follows:

Photo Title	Registration Date	Registration Number
0337_1452 Frank Sinatra at a Capitol Records recording session in Los Angeles	May 14, 2004	VAu 637-771
0337_1508 Frank Sinatra at a Capitol Records recording session in Los Angeles circa 1954	May 14, 2004	VAu 637-771
0337_1479 Frank Sinatra at a Capitol Records recording session in Los Angeles for the album Look To Your Heart	May 14, 2004	VAu 637-771
0337_2127 Frank Sinatra at a Capitol Records recording session, c. 1954	May 14, 2004	VAu 637-771
0337_1407 Frank Sinatra at This Is Sinatra Capitol recording session 1957	May 14, 2004	VAu 637-771
0377_2367 Frank Sinatra at a Capitol Records recording session 1954	May 14, 2004	VAu 637-771
0009_0520 Ocean's Eleven stars stage a fight Sammy Davis Jr., Dean Martin, Frank Sinatra, Joey Bishop, 1960	May 14, 2004	VAu 637-771
0337_1725 Frank Sinatra at a Capitol Records recording session in Los Angeles circa 1954	May 14, 2004	VAu 637-771

Photo Title	Registration Date	Registration Number
0337_1495 Frank Sinatra photo that appears on the cover of Capitol Records' album Songs for Young Lovers 1954	May 14, 2004	VAu 637-771
0337_1484a Frank Sinatra during a Capitol Records recording session 1959	May 14, 2004	VAu 637-771
0337_0506a Frank Sinatra at a Capitol Records recording session in Los Angeles 1954	May 14, 2004	VAu 637-771
0009_0520a Ocean's 11 Sammy Davis Jr., Dean Martin, Frank Sinatra, Joey Bishop 1960	April 12, 2004	VAu 608-621
Sinatra smoking before a recording session at the new Capitol	July 21, 2014	VAu 1-179-990
0009_0010 Ocean's Eleven Cast	1976	Ju 14776
0337_2121 Frank Sinatra at a Capitol Records recording session, c. 1954	May 14, 2004	VAu 637-771
0337_1493 Frank Sinatra during the Capitol recording session for the album Close To You 1957	May 14, 2004	VAu 637-771
0337_0507 Frank Sinatra at a Capitol Records recording session in Los Angeles 1954	May 14, 2004	VAu 637-771
0337_1788 Frank Sinatra at a Capitol Records recording session in Los Angeles circa 1954	May 14, 2004	VAu 637-771
0337_2203 Frank Sinatra at a Capitol Records recording session in Los Angeles circa 1957	May 14, 2004	VAu 637-771

1
2 13. Certificates of Registration for the works at issue in this case are attached
3 hereto as Exhibit 2.

4 14. At all relevant times MPTV was the owner of the copyrighted Works at
5 issue in this case by assignment.

6 15. MPTV applied copyright management information to the Works
7 displayed on the internet consisting of “mptv” centered in the middle of each
8 photograph as shown in Exhibit 1.

9 **INFRINGEMENT BY DEFENDANT**

10 16. Pixels has never been licensed to use the Works at issue in this action for
11 any purpose.

12 17. On a date after the Works at issue in this action were created, but prior to
13 the filing of this action, Pixels copied the Works.

14 18. Pixels copied MPTV’s copyrighted Works without MPTV’s permission.

15 19. After Pixels copied the Works, it made further copies and distributed the
16 Works on the internet to promote the sale of goods and services as part of print-on-
17 demand business.

18 20. Pixels copied and distributed MPTV’s copyrighted Works in connection
19 with Pixels’ business for purposes of advertising and promoting Pixels’ business, and
20 in the course and scope of advertising and selling products and services.
21

1 21. MPTV's Works are protected by copyright but are not otherwise
2 confidential, proprietary, or trade secrets.

3 22. Pixels committed copyright infringement of the Works on its
4 www.FineArtAmerica.com website as evidenced by the documents attached hereto as
5 Exhibit 3.

6 23. MPTV never gave Pixels permission or authority to copy, distribute or
7 display the Works at issue in this case.

8 24. When Pixels copied and displayed the Works at issue in this case, Pixels
9 removed MPTV's copyright management information from the Works.

10 25. MPTV never gave Pixels permission or authority to remove copyright
11 management information from the Works at issue in this case.

12 **COUNT I**
13 **COPYRIGHT INFRINGEMENT**

14 26. Plaintiff incorporates the allegations of paragraphs 1 through 25 of this
15 Complaint as if fully set forth herein.

16 27. MPTV owns valid copyrights in the Works at issue in this case.

17 28. MPTV registered the Works at issue in this case with the Register of
18 Copyrights pursuant to 17 U.S.C. § 411(a).

19 29. Pixels copied, displayed, and distributed the Works at issue in this case
20 and made derivatives of the Works without MPTV's authorization in violation of 17
21 U.S.C. § 501.

30. Pixels performed the acts alleged in the course and scope of its business activities.

31. Pixels' infringement was willful.

32. MPTV has been damaged.

33. The harm caused to MPTV has been irreparable.

COUNT II
REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION

34. Plaintiff incorporates the allegations of paragraphs 1 through 25 of this Complaint as if fully set forth herein.

35. The Works at issue in this case contain copyright management information (“CMI”).

36. Pixels intentionally removed MPTV’s Copyright Management Information (“CMI”) having reasonable grounds to know that removal would enable or facilitate copyright infringement in violation of 17 U.S.C. § 1202(b).

37. Pixels caused, directed and authorized others commit these acts knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal infringement of MPTV's rights in the works at issue in this action protected under the Copyright Act.

38. MPTV has been damaged.

39. The harm caused to MPTV has been irreparable.

COUNT III
FALSIFICATION OF COPYRIGHT MANAGEMENT INFORMATION

40. Plaintiff incorporates the allegations of paragraphs 1 through 25 of this Complaint as if fully set forth herein.

41. Pixels knowingly, and with the intent to enable or facilitate copyright infringement, provided and distributed CMI that is false in violation of 17 U.S.C. § 1202(a). Defendant committed the alleged act by embedding watermarks to the Works at issue with the designation “Fine Art America” as shown in Exhibit 3.

42. Pixels caused, directed and authorized others commit these acts knowing or having reasonable grounds to know that it will induce, enable, facilitate or conceal infringement of MPTV’s rights in the works at issue in this action protected under the Copyright Act.

43. MPTV has been damaged.

44. The harm caused to MPTV has been irreparable.

WHEREFORE, the Plaintiff prays for judgment against the Defendant Pixels.com, LLC that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. §§ 501, 1203;

